

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Capacity Assignment)	DTE 04-01
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**MOTION OF KEYSpan ENERGY DELIVERY NEW ENGLAND
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION
CONTAINED IN RESPONSE TO INFORMATION REQUEST 1-1(d)**

KeySpan Energy Delivery New England (“KeySpan” or the “Company”)¹ at the request of the Hearing Officer hereby resubmits its Motion for Protective Treatment of Confidential Information dated June 9, 2004 that requested that the Department of Telecommunications and Energy (the “Department”) grant protection from public disclosure, in accordance with G.L. c. 25, § 5D, its response to the Department’s information request DTE 1-1(d) that contains confidential, competitively sensitive and proprietary information.

I. BACKGROUND

On May 19, 2004, the Department served information requests to commenters in this proceeding. As part of its First Set of Information Requests, the Department asked local distribution companies (“LDCs”) to submit pricing terms of contracts for gas supply, storage, transportation, and portfolio management agreements. The Company requests that the Department protect from public disclosure KeySpan’s response to the

¹ The three Massachusetts local distribution companies that do business as KeySpan Energy Delivery New England are Boston Gas Company, Colonial Gas Company and Essex Gas Company.

following information request directed to LDCs: DTE 1-1(d) relating to Colonial Gas Company's storage contract with National Fuel Gas Supply Corporation, Boston Gas Company, Colonial Gas Company and Essex Gas Company's supply contracts with BP Canada Energy Company, Nexen Gas Marketing and Distrigas. As discussed below, the pricing information in these responses are competitively sensitive and release to the public would jeopardize the integrity of future negotiations between KeySpan and natural gas suppliers and portfolio managers which, in turn, would have an adverse impact on the Company's customers.

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In past decisions, the Department has found that pricing terms in gas supply contracts are subject to protection from disclosure under the statute. Colonial Gas Company, D.P.U. 96-18, at 4 (1996). In that case, the Department granted Colonial's request to protect pricing information that included reservation fees, demand charges, commodity charges and other charges. Id. See also, Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, (1996) ("The Department will continue to accord

protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive.")²

III. BASIS FOR CONFIDENTIAL TREATMENT

The Department has long recognized the gas industry's concerns regarding disclosure of contract pricing terms in a competitive marketplace and has made an effort to ensure that its review process does not undermine an LDC's efforts to negotiate low cost flexible supply contracts for the benefit of its customers. See Berkshire Gas Company, D.P.U. 93-187/188/188/190, at 20 (1994).³ In that regard, the Department has consistently held that price information is competitively sensitive for purposes of G. L. 25, § 5D. See Colonial Gas Company, D.P.U. 96-18, at 4 (1996).

Consistent with Department precedent, KeySpan seeks protection from public disclosure the pricing terms that are confidential, commercially sensitive and proprietary. KeySpan and the companies with which it has contracted are active participants in the gas marketplace. The pricing terms of KeySpan's various agreements were the result of negotiations and represent unique features of the value of service to KeySpan. Maintaining the confidentiality of those pricing and financial terms will assist the parties in negotiating future agreements. Advance disclosure of the parties' negotiating latitude

² The Department routinely grants protective status of the price terms to non-tariff firm transportation contracts between an LDC and its customers filed with the Department pursuant to the provisions of G.L. c. 164 § 94. See e.g., Boston Gas Company, GC-00-27 (2000); Boston Gas Company, GC-00-14 (2000); Colonial Gas Company, GC-00-03 (2000).

³ In the Berkshire case, the Department went on to state: "...The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons."

will compromise their respective future bargaining positions. KeySpan has not placed the documents for which it seeks protection into the public record. In short, price must remain confidential to preserve both KeySpan and the named companies' ability to function effectively in a competitive gas supply marketplace.

IV. DESCRIPTION OF CONFIDENTIAL CONTRACT TERMS

KeySpan requests that competitively sensitive pricing terms set forth in the Company's responses to the Department's information requests DTE 1-1(d) relating to Colonial Gas Company's storage contract with National Fuel Gas Supply Corporation, Boston Gas Company, Colonial Gas Company and Essex Gas Company's supply contracts with BP Canada Energy Company, Nexen Gas Marketing and Distrigas be protected from public disclosure.

V. TERM

KeySpan proposes that the information for which it seeks confidential treatment be protected from public disclosure for a period of five years from the date of a final order in this proceeding and that KeySpan be afforded an opportunity to renew its request for continued confidential treatment at that time if it so desires.

VI. CONCLUSION

The pricing terms negotiated and agreed to by KeySpan and the market participants are confidential, commercially sensitive and proprietary. KeySpan has not placed the documents for which it seeks protection into the public record. Disclosure on the public record would be detrimental to the public interest in that it would compromise both KeySpan and those companies' future bargaining position in the natural gas

marketplace. Accordingly, the pricing terms should be protected from public disclosure in accordance with the provision of G. L. c. 25, § 5D.

WHEREFORE, KeySpan respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

**KEYSPAN ENERGY DELIVERY
NEW ENGLAND**

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